

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10485 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA SD/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

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CHANASMA MUNICIPAL KAMDAR SANGH THROUGH ITS PRESIDENT

Versus

ADMINISTRATOR/CHIEF OFFICER  
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Appearance:

MR BG JANI for Petitioner

MR KAUSHAL J THAKER for Respondent No. 1

MR MR.VB GARANIA FOR DA BAMBHANIA for Respondent No. 2  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 21/06/96

ORAL JUDGEMENT

Rule. Mr.K.J.Thaker waives service of the Rule.  
On the request of both the sides the matter is taken up for final hearing right today.

The petitioner Kamdar Sangh has come with the

case that its members as shown in Annexure 'A' with the petition have been working with the respondent Municipal Borough since 1976 except one of the members of the petitioner who has completed 240 days only. It is also the case of the petitioner Kamdar Sangh that there are 27 sanctioned posts of sweepers and out of these 27 sanctioned posts only six posts have been filled.

Mr.Thaker appearing for the Municipal Borough has submitted that an affidavit-in-reply under the signature of Patel Kantibhai Tribhovandas, President of the respondent Municipal Borough had been filed in the registry whereby in March, 1996, copy of which was also given to the learned counsel for the petitioner on 15.3.1996. However, no such affidavit-in-reply is traceable in the registry but the learned counsel for the petitioner has produced the copy of this affidavit-in-reply which shows his endorsement with regard to its receipt on 15.3.1996 and having seen this copy as produced by the learned counsel for the petitioner Mr.Thaker does not dispute the correctness of the same. Both the sides submit that if the original affidavit-in-reply is not traceable this copy of the affidavit-in-reply as produced by Mr.Jani on behalf of the petitioner may be taken on record and with the consent of both the sides the matter may go ahead. Mr.Thaker has also submitted that he would also file another copy under his signature.

The contents of this affidavit-in-reply in para 7 thereof show that in the sanctioned strength of Safai Kamdar there was one post of Mukadam, 21 posts of Safai Kamdars and 4 posts of Scavengers and out of these 26 posts in all 6 safai kamdars are employed on permanent post and one scavenger (toilet kamdar) is performing the duties of safai kamdar on permanent post and against rest of the available vacancies the daily wagers are working. It has been further stated in para 8 of this affidavit-in-reply that one of the members of the petitioner kamdar sangh namely Solanki Jayantibhai Jethabhai was employed on 1.8.1979 and No.2 is serving from 1.4.1976 and not 1.1.1976. It is thus clearly discernible from the pleadings of the parties that most of the members of the petitioner association working as safai kamdar are working as such from 1976 and one of them is working since 1979 and has stated in the petition that one of the members of the petitioner sangh has completed 240 days by now and further that at least 14 posts of safai kamdars, 1 post of mukadam and 4 posts of scavengers i.e. in all 19 sanctioned posts are available against which the members of the petitioner sangh working

as safai kamdar etc. may be regularised in accordance with the seniority with reference to the date of appointment. In the facts and circumstances of the case, it appears reasonable to hold that the employees who have been working for a long period since 1976 or 1979 as safai kamdars for a period of more than fifteen years deserve to be regularised according to their seniority against the posts available on the sanctioned strength against which they are working on daily wages and one of the members of the petitioner sangh who has completed 240 days may also be considered according to his seniority position subject to the availability of post on his turn as safai kamdar.

Accordingly this Special Civil Application succeeds and it is directed that respondent Municipal Borough may go ahead to pass appropriate orders with regard to the regularisation of members of the petitioner Kamdar Sangh working as Safai Kamdar to pass appropriate orders regularising them in the services of the Municipal Borough according to their seniority against the posts available on permanent basis on sanctioned strength and may also consider the question of regularisation of one of the members of the petitioner union who is said to have been completed 240 days only as and when the vacancies are available in future and his turn comes. The direction as aforesaid with regard to the posts available in the sanctioned strength shall be carried out within a period of two months from the date the certified copy of this order is served upon the Municipal Borough. Rule is made absolute in the terms as aforesaid. No order as to costs. Direct Service is permitted.

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